

AMENDED IN SENATE APRIL 6, 2010

SENATE BILL

No. 1149

Introduced by Senator Corbett

February 18, 2010

An act to amend ~~Sections 1161.2 and 1161a~~ of *Section 1161.2 of, and to amend, repeal, and add Section 1161a of*, the Code of Civil Procedure, relating to residential tenancies and foreclosure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1149, as amended, Corbett. Residential tenancies: foreclosure.

Existing law governs unlawful detainer proceedings. Existing law authorizes the court clerk to allow access to limited civil case records filed under these provisions to certain persons, including a party to the action or a resident of the premises, under certain conditions, without regard to when they request that access. Existing law also authorizes the clerk to allow access to any other person 60 days after the complaint has been filed, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action, except as specified.

This bill would additionally authorize the clerk to allow access to those records to any other person in the case of a complaint involving residential property that has been sold in foreclosure, or under other, specified proceedings, if 60 days have elapsed since proof of service of the complaint was filed with the court and judgment against all defendants has been entered for the plaintiff, after a trial. If judgment is not entered under these conditions, the bill would prohibit the clerk from allowing access to any court records in the action, except to the persons described above who are permitted access without regard to when they request access.

Existing law governing unlawful detainer proceedings also requires that a tenant or subtenant in possession of a rental housing unit, as defined, which has been sold by reason of certain enumerated causes, including foreclosure, who rents or leases the rental housing unit either on a periodic basis, as specified, or for a fixed period of time, be given written notice to quit, as specified, at least as long as the term of hiring itself but not exceeding 30 days, before the tenant or subtenant may be removed from that rental housing unit.

This bill would additionally require that any notice to quit regarding a housing unit served within one year after a foreclosure sale include a separate cover sheet that contains an additional notice to renters. The bill would set forth the content of this notice providing the tenant with specified information regarding tenants' rights. The failure to attach this cover sheet would subject the owner to a \$500 fine in addition to any other fines, penalties, and remedies provided by law. The bill would also provide that under certain circumstances the cover sheet need not be served, as specified. *The bill would provide a modified version of the notice to renters that would be in effect on and after January 1, 2013.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1161.2 of the Code of Civil Procedure
2 is amended to read:
3 1161.2. (a) The clerk may allow access to limited civil case
4 records filed under this chapter, including the court file, index,
5 and register of actions, only as follows:
6 (1) To a party to the action, including a party's attorney.
7 (2) To any person who provides the clerk with the names of at
8 least one plaintiff and one defendant and the address of the
9 premises, including the apartment or unit number, if any.
10 (3) To a resident of the premises who provides the clerk with
11 the name of one of the parties or the case number and shows proof
12 of residency.
13 (4) To any person by order of the court, which may be granted
14 ex parte, on a showing of good cause.
15 (5) Except as provided in paragraph (6), to any other person 60
16 days after the complaint has been filed, unless a defendant prevails

1 in the action within 60 days of the filing of the complaint, in which
2 case the clerk may not allow access to any court records in the
3 action, except as provided in paragraphs (1) to (4), inclusive.

4 (6) In the case of a complaint involving residential property
5 based on Section 1161a or 1161b, to any other person, if 60 days
6 have elapsed since proof of service of the complaint was filed with
7 the court, and, as of that date, judgment against all defendants has
8 been entered for the plaintiff, after a trial. If judgment is not entered
9 under the conditions described in this paragraph, the clerk shall
10 not allow access to any court records in the action, except as
11 provided in paragraphs (1) to (4), inclusive.

12 (b) For purposes of this section, “good cause” includes, but is
13 not limited to, the gathering of newsworthy facts by a person
14 described in Section 1070 of the Evidence Code. It is the intent of
15 the Legislature that a simple procedure be established to request
16 the ex parte order described in subdivision (a).

17 (c) Upon the filing of any case so restricted, the court clerk shall
18 mail notice to each defendant named in the action. The notice shall
19 be mailed to the address provided in the complaint. The notice
20 shall contain a statement that an unlawful detainer complaint
21 (eviction action) has been filed naming that party as a defendant,
22 and that access to the court file will be delayed for 60 days except
23 to a party, an attorney for one of the parties, or any other person
24 who (1) provides to the clerk the names of at least one plaintiff
25 and one defendant in the action and provides to the clerk the
26 address, including any applicable apartment, unit, or space number,
27 of the subject premises, or (2) provides to the clerk the name of
28 one of the parties in the action or the case number and can establish
29 through proper identification that he or she lives at the subject
30 premises. The notice shall also contain a statement that access to
31 the court index, register of actions, or other records is not permitted
32 until 60 days after the complaint is filed, except pursuant to an
33 order upon a showing of good cause therefor. The notice shall
34 contain on its face the name and telephone number of the county
35 bar association and the name and telephone number of an office
36 or offices funded by the federal Legal Services Corporation or
37 qualified legal services projects that receive funds distributed
38 pursuant to Section 6216 of the Business and Professions Code,
39 that provide legal services to low-income persons in the county in
40 which the action is filed. The notice shall state that these numbers

1 may be called for legal advice regarding the case. The notice shall
2 be issued between 24 and 48 hours of the filing of the complaint,
3 excluding weekends and holidays. One copy of the notice shall be
4 addressed to “all occupants” and mailed separately to the subject
5 premises. The notice shall not constitute service of the summons
6 and complaint.

7 (d) Notwithstanding any other provision of law, the court shall
8 charge an additional fee of fifteen dollars (\$15) for filing a first
9 appearance by the plaintiff. This fee shall be added to the uniform
10 filing fee for actions filed under this chapter.

11 (e) This section does not apply to a case that seeks to terminate
12 a mobilehome park tenancy if the statement of the character of the
13 proceeding in the caption of the complaint clearly indicates that
14 the complaint seeks termination of a mobilehome park tenancy.

15 SEC. 2. Section 1161a of the Code of Civil Procedure is
16 amended to read:

17 1161a. (a) As used in this section:

18 (1) “Manufactured home” has the same meaning as provided
19 in Section 18007 of the Health and Safety Code.

20 (2) “Mobilehome” has the same meaning as provided in Section
21 18008 of the Health and Safety Code.

22 (3) “Floating home” has the same meaning as provided in
23 subdivision (d) of Section 18075.55 of the Health and Safety Code.

24 (b) In any of the following cases, a person who holds over and
25 continues in possession of a manufactured home, mobilehome,
26 floating home, or real property after a three-day written notice to
27 quit the property has been served upon the person, or if there is a
28 subtenant in actual occupation of the premises, also upon that
29 subtenant, as prescribed in Section 1162, may be removed
30 therefrom as prescribed in this chapter:

31 (1) If the property has been sold pursuant to a writ of execution
32 against that person, or a person under whom that person claims,
33 and the title under the sale has been duly perfected.

34 (2) If the property has been sold pursuant to a writ of sale, upon
35 the foreclosure by proceedings taken as prescribed in this code of
36 a mortgage, or under an express power of sale contained therein,
37 executed by that person, or a person under whom that person
38 claims, and the title under the foreclosure has been duly perfected.

39 (3) If the property has been sold in accordance with Section
40 2924 of the Civil Code, under a power of sale contained in a deed

1 of trust executed by that person, or a person under whom that
2 person claims, and the title under the sale has been duly perfected.

3 (4) If the property has been sold by that person, or a person
4 under whom that person claims, and the title under the sale has
5 been duly perfected.

6 (5) If the property has been sold in accordance with Section
7 18037.5 of the Health and Safety Code under the default provisions
8 of a conditional sale contract or security agreement executed by
9 that person, or a person under whom that person claims, and the
10 title under the sale has been duly perfected.

11 (c) Notwithstanding the provisions of subdivision (b), a tenant
12 or subtenant in possession of a rental housing unit which has been
13 sold by reason of any of the causes enumerated in subdivision (b),
14 who rents or leases the rental housing unit either on a periodic
15 basis from week to week, month to month, or other interval, or for
16 a fixed period of time, shall be given written notice to quit pursuant
17 to Section 1162, at least as long as the term of hiring itself but not
18 exceeding 30 days, before the tenant or subtenant may be removed
19 therefrom as prescribed in this chapter.

20 (d) (1) Any notice or notices to quit regarding a housing unit
21 served within one year after a foreclosure sale shall include a
22 separate cover sheet attached on top of the notice or notices.

23 (2) The cover sheet shall consist of the following notice, in at
24 least 12-point type:

25
26 Notice to Any Renters Living At
27 [street address of the unit]
28

29 The attached notice means that the owner of your home plans
30 to evict you. You should talk to a lawyer immediately to see what
31 your rights are.

32 If you receive any court papers, you must file a written response
33 on a special form with the court, within five days. You must
34 respond even if your name is not on the papers. If you don't
35 respond, you will likely lose any rights you may have. In many
36 cases, you can respond without being reported to a credit or tenant
37 reporting agency. You should ask a lawyer about it.

38 You usually have the right to stay in your home for 90 days,
39 regardless of any deadlines stated on any attached papers. You
40 may have the right to stay even longer if you have a lease. In some

1 cases and in some cities with a “just cause for eviction law,” you
2 may not have to move at all. But you must take the proper legal
3 steps in order to protect your rights. Your home was sold in
4 foreclosure on [insert date], and the sale was recorded in [insert
5 recorded document location]. Your rights are affected by whether
6 you lived at the property on the date it was sold.

8 How to Get Legal Help

9
10 If you cannot afford an attorney, you may be eligible for free
11 legal services from a nonprofit legal services program. You can
12 locate these nonprofit groups at the California Legal Services Web
13 site (www.lawhelpcalifornia.org), the California Courts Online
14 Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting
15 your local court or county bar association.

16
17 (3) Failure to attach the cover sheet as required by this section
18 shall subject the owner to a civil fine of five hundred dollars
19 (\$500), in addition to any other fines, penalties, and remedies
20 provided by law.

21 (e) The cover sheet required by subdivision (d) need not be
22 served if all of the following apply:

23 (1) The tenancy sought to be terminated was created after the
24 foreclosure sale, by written agreement of the parties.

25 (2) The written agreement is attached to the notice.

26 (3) Either:

27 (A) The notice is served for a cause specified in Section 1161
28 and complies with the requirements of that section.

29 (B) The notice is served pursuant to Section 1946.1 of the Civil
30 Code, and at least 60 days have elapsed after the foreclosure sale
31 before notice is given.

32 (f) For the purpose of this section, “rental housing unit” means
33 any structure or any part thereof which is rented or offered for rent
34 for residential occupancy in this state.

35 (g) *This section shall remain in effect only until January 1,*
36 *2013, and as of that date is repealed.*

37 *SEC. 3. Section 1161a is added to the Code of Civil Procedure,*
38 *to read:*

39 *1161a. (a) As used in this section:*

1 (1) “Manufactured home” has the same meaning as provided
2 in Section 18007 of the Health and Safety Code.

3 (2) “Mobilehome” has the same meaning as provided in Section
4 18008 of the Health and Safety Code.

5 (3) “Floating home” has the same meaning as provided in
6 subdivision (d) of Section 18075.55 of the Health and Safety Code.

7 (b) In any of the following cases, a person who holds over and
8 continues in possession of a manufactured home, mobilehome,
9 floating home, or real property after a three-day written notice to
10 quit the property has been served upon the person, or if there is a
11 subtenant in actual occupation of the premises, also upon that
12 subtenant, as prescribed in Section 1162, may be removed
13 therefrom as prescribed in this chapter:

14 (1) If the property has been sold pursuant to a writ of execution
15 against that person, or a person under whom that person claims,
16 and the title under the sale has been duly perfected.

17 (2) If the property has been sold pursuant to a writ of sale, upon
18 the foreclosure by proceedings taken as prescribed in this code of
19 a mortgage, or under an express power of sale contained therein,
20 executed by that person, or a person under whom that person
21 claims, and the title under the foreclosure has been duly perfected.

22 (3) If the property has been sold in accordance with Section
23 2924 of the Civil Code, under a power of sale contained in a deed
24 of trust executed by that person, or a person under whom that
25 person claims, and the title under the sale has been duly perfected.

26 (4) If the property has been sold by that person, or a person
27 under whom that person claims, and the title under the sale has
28 been duly perfected.

29 (5) If the property has been sold in accordance with Section
30 18037.5 of the Health and Safety Code under the default provisions
31 of a conditional sale contract or security agreement executed by
32 that person, or a person under whom that person claims, and the
33 title under the sale has been duly perfected.

34 (c) Notwithstanding the provisions of subdivision (b), a tenant
35 or subtenant in possession of a rental housing unit which has been
36 sold by reason of any of the causes enumerated in subdivision (b),
37 who rents or leases the rental housing unit either on a periodic
38 basis from week to week, month to month, or other interval, or for
39 a fixed period of time, shall be given written notice to quit pursuant
40 to Section 1162, at least as long as the term of hiring itself but not

1 *exceeding 30 days, before the tenant or subtenant may be removed*
2 *therefrom as prescribed in this chapter.*

3 *(d) (1) Any notice or notices to quit regarding a housing unit*
4 *served within one year after a foreclosure sale shall include a*
5 *separate cover sheet attached on top of the notice or notices.*

6 *(2) The cover sheet shall consist of the following notice, in at*
7 *least 12-point type:*

8
9 *Notice to Any Renters Living At*
10 *[street address of the unit]*
11

12 *The attached notice means that the owner of your home plans*
13 *to evict you. You should talk to a lawyer immediately to see what*
14 *your rights are.*

15 *If you receive any court papers, you must file a written response*
16 *on a special form with the court, within five days. You must respond*
17 *even if your name is not on the papers. If you don't respond, you*
18 *will likely lose any rights you may have. In many cases, you can*
19 *respond without being reported to a credit or tenant reporting*
20 *agency. You should ask a lawyer about it.*

21 *You may have the right to stay in your home for 30 days or*
22 *longer, regardless of any deadlines stated on any attached papers.*
23 *In some cases and in some cities with a "just cause for eviction*
24 *law," you may not have to move at all. But you must take the*
25 *proper legal steps in order to protect your rights. Your home was*
26 *sold in foreclosure on [insert date], and the sale was recorded in*
27 *[insert recorded document location]. Your rights are affected by*
28 *whether you lived at the property on the date it was sold.*

29
30 *How to Get Legal Help*
31

32 *If you cannot afford an attorney, you may be eligible for free*
33 *legal services from a nonprofit legal services program. You can*
34 *locate these nonprofit groups at the California Legal Services Web*
35 *site (www.lawhelpcalifornia.org), the California Courts Online*
36 *Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting*
37 *your local court or county bar association.*

38
39 *(3) Failure to attach the cover sheet as required by this section*
40 *shall subject the owner to a civil fine of five hundred dollars*

1 (\$500), in addition to any other fines, penalties, and remedies
2 provided by law.

3 (e) The cover sheet required by subdivision (d) need not be
4 served if all of the following apply:

5 (1) The tenancy sought to be terminated was created after the
6 foreclosure sale, by written agreement of the parties.

7 (2) The written agreement is attached to the notice.

8 (3) Either:

9 (A) The notice is served for a cause specified in Section 1161
10 and complies with the requirements of that section.

11 (B) The notice is served pursuant to Section 1946.1 of the Civil
12 Code, and at least 60 days have elapsed after the foreclosure sale
13 before notice is given.

14 (f) For the purpose of this section, “rental housing unit” means
15 any structure or any part thereof which is rented or offered for
16 rent for residential occupancy in this state.

17 (g) This section shall become operative on January 1, 2013.

18
19
20 CORRECTIONS:

21 Title—Lines 1 and 2.
22